

Notice of Allowability	Application No.	Applicant(s)	
	10/664,288	MCKINLEY	
	Examiner	Art Unit	
	MICHAEL J. ARAJ	3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the interview held on December 2, 2008.
2. ☒ The allowed claim(s) is/are 1, 2, 4-6, 8-12, 14 and 15.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date ____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date ____ 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other ____. |
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/Michael J Araj/
Examiner, Art Unit 3775

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in an in-person interview with Lisa Adams on December 2, 2008.

The application has been amended as follows:

Claim 1 will read as follows:

A spinal rod approximator system comprising:

a spinal implant having a rod-receiving member and a bone engaging member extending distally from the rod-receiving member; and

a spinal rod approximator having

an implant-gripping member having opposed legs that form a u-shaped distal portion that extends in a direction substantially transverse to a longitudinal axis of a proximal portion of the implant-gripping member, the opposed legs extending under a distal end of the rod-receiving member of the spinal implant and on opposed sides of the bone engaging member;

a rod-engaging member slidably coupled to the implant-gripping member along the longitudinal axis of the proximal portion at a position proximal to the implant-gripping member, the rod-engaging member having a distal portion that extends transverse to a proximal portion; and

a pusher member freely-rotatably coupled to at least one of the implant-gripping member and the rod-engaging member and threadably mated to the other one of the implant-gripping member and the rod-engaging member such that rotation of at least a portion of the pusher member is effective to move at least one of the implant-gripping member and the rod-engaging member with respect to one another.

Claim 12 will read as follows:

A spinal rod approximator, comprising:

first and second components slidably coupled to one another and adapted for relative movement along a longitudinal sliding axis, the first component including an implant-gripping portion offset from the sliding axis and having opposed legs that form a u-shaped distal portion that is adapted to be positioned under a distal end of a rod-receiving member of a spinal implant, and the second component including a rod-engaging portion having opposed arms offset from the sliding axis and being adapted to engage a spinal rod to move the spinal rod toward the rod-receiving member of the spinal implant being engaged by the implant-gripping portion, the u-shaped distal portion and the rod-engaging portion extending in substantially parallel planes, wherein the implant-gripping portion and the rod-engaging portion each extend in a direction substantially transverse to the sliding axis; and

an actuator threadably coupled to one of the first and second components and effective to move at least one of the components with respect to the other component.

Claim 16 is cancelled.

Claims 4, 6, 11 and 15 were withdrawn claims because they were pursuant to a non-elected invention as a result of a restriction requirement made on June 21, 2006. Claims 4, 6, 11 and 15 are hereby rejoined and fully examined for patentability.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/
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